No. 01-705, 01-715

Supreme Court, U.S.
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In the Supreme Court of the United States

JO ANNE B. BARNHART, Commissioner of Social Security,
Petitioner,

v.

PEABODY COAL COMPANY, *et al.*

MICHAEL H. HOLLAND, *et al.*, as Trustees of the United Mine Workers of America Combined Benefit Fund,
Petitioners,

v.

BELLAIRE CORPORATION, *et al.*

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONERS THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND

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QUESTION PRESENTED

In the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701–9722 and 30 U.S.C. § 1232(h), Congress directed the Social Security Administration to assign each of the retired coal miners and their dependents who are beneficiaries of the United Mine Workers of America Combined Benefit Fund to a specific coal operator or related company in accordance with the statutory criteria set forth in Section 9706. The Act provided that the beneficiary assignments "shall" be made before October 1, 1993. SSA completed most, but not all, of the initial assignments by that date.

The question presented is whether SSA retained authority to make initial assignments of Combined Fund beneficiaries after September 30, 1993.

PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, the following persons were parties in the court of appeals: Larry G. Massanari, Acting Commissioner of Social Security; William P. Hobgood, Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carl E. Van Horn, and Gail R. Wilensky, as Trustees of the United Mine Workers of America Combined Benefit Fund; and Eastern Associated Coal Company, NACCO Industries, Inc., and North American Coal Corporation.

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BRIEF FOR PETITIONERS THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND

OPINIONS BELOW

The opinions of the court of appeals (01-705 Pet. App. 1a-4a) are not officially reported. The opinion and order of the district court in *Bellaire* (*id.* at 14a–25a) are not reported. The order of the district court in *Peabody* (*id.* at 7a–8a) is not reported.

JURISDICTION

The judgments of the court of appeals were entered on June 21, 2001 in *Peabody* and June 22, 2001 in *Bellaire*. On September 10, 2001, Justice Stevens extended the time within which the Trustees could file a petition for a writ of certiorari in *Bellaire* to and including October 22, 2001. On September 12, 2001, Justice Stevens extended the time within which the Commissioner could file a petition for a writ of certiorari to and including October 19, 2001 in *Peabody* and October 20, 2001 in *Bellaire*. On October 10, 2001 Justice Stevens further extended the Commissioner's time for petitioning to and including November 18, 2001 in *Peabody* and November 19, 2001 in *Bellaire*. On October 15, 2001, Justice Stevens further extended the Trustees' time for petitioning in *Bellaire* to and including November 19, 2001. The Commissioner's petition in the two cases, and the Trustees' petition in *Bellaire*, were filed on November 19, 2001 (a Monday). The petitions were granted and the cases consolidated on January 22, 2002. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case concerns the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. §§ 9701–9722 and 30 U.S.C. § 1232(h), which is reproduced in 01-715 Pet. App. 16a-51a.

STATEMENT OF THE CASE

The Coal Act established a statutory system for providing retiree health benefits to more than 100,000 beneficiaries, including retired coal miners represented by the United Mine Workers of America ("UMWA") and their survivors and dependents. Petitioners in No. 01-715 are the Trustees of the United Mine Workers of America Combined Benefit Fund ("Combined Fund"), which is one of two statutory trust funds created under the Coal Act. *See* 26

U.S.C. § 9702(a). The Combined Fund is a multiemployer employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(1), (37), and an employee trust fund within the meaning of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5).

Section 9706(a) of the Coal Act provides that the Social Security Administration ("SSA"), using a statutory set of priorities, "shall, before October 1, 1993" assign each Combined Fund beneficiary to a specific coal operator that had signed a "coal wage agreement" (or to a "related person" of such a signatory). 26 U.S.C. § 9706(a). SSA assigned certain Combined Fund beneficiaries to respondent Bellaire Corporation ("Bellaire"), and as a result Bellaire became liable to pay annual health care premiums to the Combined Fund to finance the health care of the assigned beneficiaries. 26 U.S.C. § 9704(a). Respondents NACCO Industries, Inc. and North American Coal Corp., two companies that are "related" to Bellaire under the statutory definition in 26 U.S.C. § 9701(c)(2)(A), are jointly and severally liable for Bellaire's premiums. *See* 26 U.S.C. § 9704(a).

Almost immediately after enactment of the Coal Act, Bellaire challenged the constitutionality of the statute as applied to Bellaire and its related persons. *Bellaire Corp. v. Shalala*, 995 F. Supp. 125 (D.D.C. 1997) (complaint filed Jan. 29, 1993). Bellaire argued that Congress committed an unconstitutional taking or acted arbitrarily and irrationally in violation of due process by requiring it to pay annual premiums to finance health benefits for Bellaire's former employees and their eligible dependents.

Before enactment of the Coal Act, Bellaire's participation in the collectively bargained UMWA multiemployer health care system spanned at least four decades. During this period, Bellaire was a signatory to, among other agreements, the National Bituminous Coal

Wage Agreements of 1974, 1978, 1981, and 1984. *Id.* at 130.[1/] Each of these collective bargaining agreements, discussed in more detail below, explicitly referred to lifetime retiree health benefits and the retention of a health services card until death. Moreover, beginning in 1978, each NBCWA obligated signatory coal operators to continue making contributions to the relevant trust funds for as long as the NBCWAs required, regardless of whether the operators actually signed any subsequent NBCWA. *Id.* at 128. Bellaire nevertheless ceased contributions to the UMWA trust funds and discontinued its individual employer health plan. *Id.* at 131. Bellaire thus left its post-1975 retirees to receive health coverage from a multiemployer system to which Bellaire no longer contributed.

Having participated in creating coal miners' legitimate expectations of lifetime health benefits and in bringing about the funding crisis that afflicted the UMWA Funds before enactment of the Coal Act, Bellaire was in a poor position to challenge the validity of Congress's remedial legislation. Bellaire's constitutional attack failed, and it sought no further review.

Now, in this action, Bellaire seeks to reduce substantially its liability under the Coal Act. It argues that SSA lacked authority to make any initial assignments of Combined Fund beneficiaries after September 30, 1993, and that, therefore, SSA's assignments of 270 Combined Fund beneficiaries to Bellaire after that date were automatically invalid. Relying on the court of appeals' prior ruling in *Dixie*

1/ Some coal operators executed so-called "me too" agreements with the UMWA in which they agreed to abide by the terms of the NBCWA. *Bellaire*, 995 F. Supp. 128 n.2. Bellaire was a "me too" signatory to the 1981 and 1984 NBCWAs and signed two extension agreements that obligated it to provide health benefits to its own retirees until January 20, 1990. *Id.* at 130.

Fuel Co. v. Commissioner of Social Security, 171 F.3d 1052 (6th Cir. 1999), the district court ruled in Bellaire's favor and entered final judgment on this count of the complaint. 01-715 Pet. App. 3a–14a. SSA and the Trustees of the Combined Fund, recognizing that *Dixie Fuel* would bind a subsequent panel in the Sixth Circuit, asked the court of appeals to hear their appeal *en banc*. The court of appeals denied the request, and a subsequent panel affirmed the district court's decision on the basis of *Dixie Fuel*. *Id.* at 1a – 2a, 15a.

I. HISTORY OF THE COAL ACT

The history of the events leading to enactment of the Coal Act has been reviewed at length by various courts, including this Court. *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. __, 122 S. Ct. 941, 946-48 (2002); *Eastern Enterprises v. Apfel*, 524 U.S. 498, 504-11 (1998) (plurality opinion);[2/] *Holland v. Pardee Coal Co.*, 269 F.3d 424, 427-29 (4th Cir. 2001), *cert. pending*, No. 01-1366 (docketed Mar. 18, 2002); *Unity Real Estate Co. v. Holland*, 178 F.3d 649, 653-54 (3d Cir.), *cert. denied*, 528 U.S. 963 (1999); *In re Blue Diamond Coal Co.* (*Blue Diamond Coal Co. v. Shalala*), 79 F.3d 516 (6th Cir. 1996), *cert. denied*, 519 U.S. 1055 (1997); *Lindsey Coal Mining Co. v. Chater*, 90 F.3d 688 (3d Cir. 1996); *see also* Report of the Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits (Nov. 5, 1990) ("*Coal Comm'n Report*"). Accordingly, we summarize here only briefly the relevant factual background and the essential features of the Coal Act related to Bellaire's liability.[3/]

2/ Unless otherwise indicated, subsequent citations to *Eastern* refer to the plurality opinion.

3/ *See Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 335 (1999) (understanding Act's

The coal industry and health care for retired coal miners have been subject to extensive government intervention and regulation for more than 50 years. In 1946, a breakdown in negotiations between the UMWA and coal companies about medical services for miners prompted a nationwide strike. *Eastern*, 524 U.S. at 504-05. The federal government declared a national emergency, seized the nation's coal mines, and conducted its own negotiations with the UMWA in an effort to resolve the dispute. *Id.;* 11 Fed. Reg. 5593 (1946). The negotiations produced the historic Krug-Lewis Agreement between the federal government and the UMWA that ended the strike and created the UMWA Health and Retirement Funds.[4/] Since then, retiree health benefits have been provided through a series of multiemployer health plan trust funds (the "UMWA Plans") that have been developed through successive collective bargaining agreements known as National Bituminous Coal Wage Agreements ("NBCWAs"). *Coal Comm'n Report* at 20-29; *Eastern*, 524 U.S. at 505-11. The UMWA and the Bituminous Coal Operators' Association, Inc. ("BCOA") have negotiated these agreements since 1951. *Id.* at 506.

Beginning in 1947, the NBCWAs provided for the funding of health benefits for retirees through levies assessed against the coal operators and paid into the UMWA Plans on the basis of the amount of coal mined or the number of covered hours worked. *Eastern*, 524 U.S. at 505; *Pardee*, 269 F.3d at 427. By their nature as multiemployer trusts, the UMWA Plans continued to provide benefits to eligible retirees even if the retirees' former employers went out of

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historical background "is essential to a proper interpretation of the Act's present text"); *Edwards v. Aguillard*, 482 U.S. 578, 595 (1987) (Court considers historical context and the specific sequence of events leading to statute's enactment).

4/ *Eastern*, 524 U.S. at 505; *Coal Comm'n Report at* 5-20.

business or otherwise stopped paying into the Plans. *Pardee*, 269 F.3d at 427; *Eastern*, 524 U.S. at 511. The participating coal operators that remained financed the benefits of these so-called "orphan" retirees.[5/] The 1974 NBCWA referred expressly to retiree health benefits and provided that retired miners would retain a health services card until their death. The provision of lifetime health benefits and the extension of benefits for surviving spouses combined with various other circumstances, including the retirement of a generation of miners and rapid escalation of health care costs, to create financial problems for the UMWA Plans. *Id.* at 509-10; *Pardee*, 269 F.3d at 427-28. To protect the Plans' solvency, the 1978 NBCWA included a "guarantee" clause obligating signatories to make sufficient contributions to maintain benefits during the term of the agreement. *Eastern*, 524 U.S. at 510-11. The 1978 agreement also introduced the so-called "evergreen" clause, which required signatories to continue contributing to the UMWA Plans as long as they remained in the coal business, regardless of whether they signed a subsequent NBCWA. *Id.* at 509-10; *Bellaire*, 995 F. Supp. at 128.

Despite the 1978 changes, by the late 1980s, the UMWA Plans were in financial trouble. *Eastern*, 524 U.S. at 511. As health care costs increased, coal operators exited the coal industry in increasing numbers and "dumped" their retirees into the UMWA Plans, where their benefits would be funded by those operators still mining coal.[6/] As the number

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5/ *Pardee*, 269 F.3d at 427; *Sigmon*, 122 S. Ct. at 947 n.4 ("term 'orphan retirees' encompassed both 'true orphans,' whose former employers were no longer in business and 'reachback orphans' whose former employers were still in business but no longer signatories to a coal wage agreement").

6/ *Eastern*, 524 U.S. at 510-11; *Coal Comm'n Report* at 75 (statement of Vice Chairman Perritt) (employers have been allowed to

of coal operators contributing to the UMWA Plans dwindled, fewer and fewer operators remained to carry the burden of rapidly rising health care costs, not only for their own retirees but also for thousands of retirees with whom none of the remaining contributing operators had ever had any employment relationship.[7/] As a result, the continued viability of the UMWA multiemployer health care system was cast into serious doubt.

This funding crisis for orphan retirees culminated in 1989, when the UMWA led a ten-month strike against the Pittston Coal Company, a major coal producer that refused to sign the 1988 NBCWA. *Eastern*, 524 U.S. at 511; *Pardee*, 269 F.3d at 428. The dispute was not resolved until Secretary of Labor Dole intervened. As part of the settlement, the Secretary established the Coal Commission to study the retiree health care crisis and to recommend "a solution for ensuring the orphan retirees in the [UMWA Plans] will continue to receive promised medical care." *Coal Comm'n Report* at 2; *Pardee*, 269 F.3d at 428. The Coal Commission observed that coal miners had, in their labor negotiations, "traded lower pensions over the years for better health care benefits," and thus were entitled to received the promised benefits. *Coal Comm'n Report*, Exec. Summary at vii; *Eastern*, 524 U.S. at 511-12. On November 5, 1990, the

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dump their retiree health benefit obligations on the existing health care funds and to evade contribution obligations).

7/ *See Eastern*, 524 U.S. at 510-11; HOUSE COMMITTEE ON WAYS AND MEANS, 103D CONG., 1ST SESS., FINANCING UMWA COAL MINERS "ORPHAN RETIREE" HEALTH BENEFITS (Comm. Print 1993) [hereinafter "*Financing Orphan Retirees*"] at 25 (BCOA employers complained that for every $1 they paid into the Fund for their own retirees, they were paying an additional $3 for other companies' retirees); *Coal Comm'n Report*, Exec. Summary at vii ("Signatory coal operators who are still in the coal business are willing to pay the fair cost of their retirees, but are increasingly unwilling to shoulder the burden of paying for orphans").

Coal Commission issued its Report recommending that "a statutory obligation to contribute to the plans should be imposed on current and former signatories to the [NBCWAs]." *Coal Comm'n Report*, Exec. Summary at vii.

Recognizing that health benefits for more than 100,000 beneficiaries were in jeopardy and that many of the beneficiaries were retired miners and dependents whose former employers were no longer in business, Congress undertook its own intensive examination of the crisis.[8/] In March 1992, Congress passed an earlier version of the Coal Act, which funded health care for orphan retirees through a controversial industry-wide tax on future coal production.[9/] This version was passed as part of more extensive tax legislation, which President Bush vetoed. *Sigmon*, 122 S. Ct. at 948 n.6. The expiration of the 1988 NBCWA, scheduled for February 1993, loomed on the horizon, and members of Congress continued to push for legislation.[10/]

After much negotiation, the final version of the bill provided that only companies that were signatory to one or more coal wage agreements would be required to help

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8/ *Sigmon*, 122 S. Ct. at 947; *Financing Orphan Retirees* at 25.

9/ *Eastern*, 524 U.S. at 513; *see* 138 Cong. Rec. 5,325-35 (1992) (Senate debate on industry-wide tax to finance orphan health care).

10/ *Sigmon*, 122 S. Ct. at 948 n.6; 138 Cong. Rec. 5,333 (1992) (remarks of Sen. Rockefeller) (crisis created by approaching expiration of the 1988 agreement which threatened to leave thousands of orphan retirees with no benefits); *id.* at 34,005 (reproducing submission by Senator Wallop, CONGRESSIONAL RESEARCH SERVICE REPORT FOR CONGRESS, 102D CONG., 2D SESS., COAL INDUSTRY: USE OF ABANDONED MINE RECLAMATION FUND MONIES FOR UMWA "ORPHAN RETIREE" HEALTH BENEFITS (1992) [hereinafter "*CRS Report*"] (coal industry faced imminent time deadline to find solution for funding orphan retirees because 1988 Agreement was scheduled to expire and failure to resolve the issue could have led to a strike by miners or refusal by coal companies to fund benefits).

finance retiree health care for the beneficiaries of the UMWA Plans. *Sigmon*, 122 S. Ct. at 948 n.6. The Coal Act in its final form was enacted on October 24, 1992, as part of the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776, 3036-56. The statute placed a strong emphasis on "identifying the former signatory employer of each beneficiary." *Financing Orphan Retirees* at 51. Within the Coal Act itself, Congress explicitly found that:

> it is necessary to modify the private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

26 U.S.C. § 9701 (historical note). Congress further stated (*id.*) that the policy of the Coal Act was:

> to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . [and] to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.

II. STRUCTURE OF THE COAL ACT

A. Eligibility For Benefits And Liability Structure

Persons are eligible for benefits from the Combined Fund if, as of July 20, 1992, they were eligible to receive, and were receiving, benefits from either of the two then-existing collectively bargained UMWA health care plans—the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan. 26 U.S.C. § 9703(f). The beneficiary population of the Combined Fund is thus closed, and the number of beneficiaries will gradually decline. *Financing Orphan*

Retirees at 66. Indeed, during the current Combined Fund plan year, the number of remaining beneficiaries is only around half of the approximately 108,000 with which the Combined Fund began operations in February 1993.

To finance the Combined Fund, Congress apportioned liability to coal operators on a "pay for your own" basis. *Pardee*, 269 F.3d at 428.[11/] This principle is codified at Section 9706(a) of the Coal Act, which directs SSA to assign Combined Fund beneficiaries to signatory operators (and "related persons" of such operators) according to a statutorily prescribed system of priorities. 26 U.S.C. § 9706(a). Under this funding system, coal operators, like Bellaire, that previously had agreed to contribute to the UMWA Plans pursuant to the terms of their collective bargaining agreements are required to pay for the care of their own former employees and their dependents. This liability scheme reflects Congress' determination that all coal operators, including Bellaire, that had employed the retirees in question, "and thereby benefited from their services, [should] be assigned responsibility for providing the health care benefits promised in their various collective bargaining agreements." 138 Cong. Rec. 34,001 (1992).

B. The Coal Act's Timetable And Interim Funding Scheme

Congress outlined a timetable for implementing the Coal Act's funding scheme. It directed that the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan be merged into the Combined Fund as of February 1, 1993 (the

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11/ *See also* 138 Cong. Rec. 20,120 (1992) (remarks of Senator Ford) (Coal Act "close[s] the new orphan fund" and "allocate[s] costs according to the principle that those most responsible should bear the greatest portion of costs"); *id.* at 34,001 (proposed Senate Conference Report) (Coal Act is "designed to allocate the greatest number of beneficiaries in the Plans to a prior responsible operator").

termination date of the 1988 NBCWA). 26 U.S.C. § 9702(a)(2). The Combined Fund began at that time to provide health and death benefits to surviving coal industry retirees and their dependents. 26 U.S.C. § 9703(b)(4). Under the statute, the Combined Fund's first "plan year" was the eight-month period from February 1 to September 30, 1993. 26 U.S.C. § 9702(c). Each succeeding plan year begins on October 1 and ends on the following September 30. *Id.*

Congress provided an interim funding mechanism for the Combined Fund's first plan year, while SSA performed the daunting task of assigning each of the Combined Fund's beneficiaries to a specific former employer or related person. Under Sections 9704(i) and 9705(a) of the statute, benefits for the first plan year were to be funded through a combination of $70 million transfer from the UMWA 1950 Pension Plan and interim contributions from the 1988 NBCWA signatories apportioned on the basis of the amounts of their payments to the 1950 and 1974 Benefit Plans during the term of the 1988 agreement. Once the actual health care premiums for the Combined Fund's first and second plan years were determined and assessed, the 1988 agreement operators were then entitled to a credit against those premiums in the amount of their interim contributions during the first plan year. *See* 26 U.S.C. § 9704(i)(D)(i); *see also* 138 Cong. Rec. 34,002-03 (1992) (explaining establishment of Combined Fund and financing of benefits). Under the Coal Act's scheme, the interim funding period was to end with the beginning of the Combined Fund's second plan year on October 1, 1993, and health care premiums for the first and second plan years were to be assessed and paid during the second plan year. *See* 26 U.S.C. § 9704(g)(1).

In Section 9706(a), Congress directed SSA to assign Combined Fund beneficiaries to specific former employers "before October 1, 1993." Congress anticipated that the

Combined Fund could then use those beneficiary assignments as a basis for assessing premiums—for the Combined Fund's first and second plan years—to assigned operators. *Pardee*, 269 F.3d at 428; 138 Cong. Rec. 34,003 (1992). The statutory schedule thus reflected Congress' goal of having a new benefits system in place by the time of the termination of the 1988 NBCWA on February 1, 1993, and the impossibility of completing the beneficiary assignment process between the Coal Act's October 24, 1992 enactment date and the date in February 1993 when the Combined Fund would need to begin providing benefits.

C. Funding Benefits For "Orphans"

Critical to the Coal Act's funding scheme was Congress' adoption of a method of providing for "orphan" beneficiaries in the Combined Fund (*i.e.*, Combined Fund beneficiaries whose former employers are no longer in business and who could not be assigned under the criteria in Section 9706 of the Coal Act).[12/] To help alleviate the financial burden of health care for such beneficiaries whom none of the assigned operators ever employed, Congress authorized transfers of substantial sums to the Combined Fund from the UMWA 1950 Pension Plan and from the Abandoned Mine Reclamation Fund (the "AML Fund") established under the Surface Mining Control and Reclamation Act of 1977. 26 U.S.C. § 9705(a), (b); 30 U.S.C. § 1232(h).[13/] Congress provided that, on the first day

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12/ *See* 138 Cong. Rec. 34,001 (1992) (proposed Senate Conference Report) ("if no operator remains in business under the formulation [in Section 9706(a)], that retiree becomes an unassigned beneficiary").

13/ 138 Cong. Rec. 34,001 (1992) (subsidy for unassigned beneficiaries is "a key component of legislative compromise" and is provided in recognition that such beneficiaries were not employed by the assigned operators); *id.* at 34,004 (*CRS Report*) (evaluating proposal to transfer interest on AML Fund to "help finance UMWA orphan retiree health benefits").

of each of the Combined Fund's first three plan years, a $70 million transfer would be made from the UMWA 1950 Pension Plan to the Combined Fund. 26 U.S.C. § 9705(a). These funds, totaling $210 million, would be used in large part to defray the cost of health care for unassigned beneficiaries. 26 U.S.C. § 9705(a)(3)(B); 138 Cong Rec. 34,003 (1992) (explaining transfers). Thereafter, for Combined Fund plan years beginning on and after October 1, 1995, Congress provided for annual transfers to the Combined Fund from the AML Fund. 26 U.S.C. § 9705(b); 30 U.S.C. § 1232(h). These transfers, which are limited by the amount of annual interest earned by the AML Fund or $70 million (whichever is greater), can be used only to defray the expense of providing health benefits to unassigned beneficiaries, and the amount transferred cannot exceed the amount necessary to cover these expenses. 30 U.S.C. § 1232(h)(2) & (3).

If the transfers described in the preceding paragraph prove insufficient to cover the orphan retirees, the Coal Act provides for the assessment of an annual unassigned beneficiaries premium against all assigned operators. 26 U.S.C. § 9704(d). The unassigned beneficiaries premiums for a given plan year are to be allocated among signatory operators on the basis of their pro rata share of the beneficiaries that have been assigned for that year. *Id.* Thus, the more beneficiaries an operator is assigned, the greater its share of the total unassigned beneficiaries premiums.[14/] To date, the transfers have proven sufficient, and assigned coal operators have paid no premiums for unassigned beneficiaries. *Pardee*, 269 F.3d at 429.

14/ *Financing Orphan Retirees* at 69 (company's contributions for unassigned orphans will be in direct proportion to the number of its assigned beneficiaries; thus, companies with largest dollar responsibility will bear largest dollar responsibility for orphan retirees).

D. Obstacles To SSA's Assignment Process

Once the Coal Act became law, SSA was charged with the massive responsibility of implementing Section 9706(a)'s assignment criteria, which required identifying and locating former employers for more than 100,000 beneficiaries, and unraveling the corporate relationships between employers and potentially related companies.[15/] Despite the magnitude of the task, no funds were appropriated for SSA to commence its assignment work until July 13, 1993.[16/] This was less than 80 days before October 1, 1993, the date by which SSA was to have assigned Combined Fund beneficiaries to the appropriate former employers. In early September 1993, the House Committee on Ways and Means was aware that SSA would not complete the initial assignments by October 1, 1993:

> SSA anticipated that checking the [employment] records would be very time consuming . . . Linking an individual's work history to a specific employer will . . . require searching through microfilm records and entering the information by hand into the computer system. Preliminary estimates by the SSA suggest that it would take approximately 150 work years just to retrieve the microfilm records. This does not include the additional work involved in determining the assignment to an employer. On a routine basis,

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15/ *Financing Orphan Retirees* at 64-65 (most Combined Fund beneficiaries retired before 1976, social security records were not computerized prior to 1978, and SSA does not maintain information needed to track the interrelationships among companies to identify "related persons"); J.A. 179-84 (Decl. of Richard Harron, Dir. of Div. Coverage and Support, SSA) (describing difficulty of assignment process and SSA's effort to complete it on time).

16/ Supplemental Appropriations Act of 1993, H.R. 2118, Pub. L. No. 103-50, Ch. V, 139 Cong. Rec. D. 765.

> SSA has 140 technicians specially trained to work with the microfilm records, which are difficult to decipher. *Extra resources would be needed to complete the assignments by the October 1, 1993 target date.*

Financing Orphan Retirees at 64-65 (emphasis supplied). Congress provided no extra resources to expedite the initial assignment process. There is no indication, however, that Congress believed that any initial assignments of Combined Fund beneficiaries made on or after October 1, 1993 would be automatically void or that the liability scheme envisioned in the Coal Act would be substantially altered by treating as "unassigned" thousands of beneficiaries who properly could be assigned according to the statutory criteria.

Because of Congress' delayed funding and SSA's limited resources, approximately 10,000 initial assignments of Combined Fund beneficiaries were made on or after October 1, 1993. At the time of the proceedings in the district court, these assignments accounted for approximately $112 million in premiums that had been assessed to the 247 operators who received such assignments. 01-715 Pet. App. 52a-54a. The Combined Fund had collected approximately $105 million of this amount, an amount that presumably would need to be refunded if all assignments made on or after October 1, 1993 were void. *Id.*

III. PROCEEDINGS BELOW

In June 1999, Bellaire filed a six-count complaint against SSA, challenging the assignment of Combined Fund beneficiaries on various grounds. Among Bellaire's claims was its contention that, under the Coal Act, the 270 beneficiaries that SSA initially assigned to Bellaire on or after October 1, 1993 were improperly assigned and that those beneficiaries instead should be permanently unassigned. J.A. 83-85. According to Bellaire, Section 9706(a)'s statement that SSA "shall" make assignments

"before October 1, 1993" established a jurisdictional deadline by which SSA was required to make initial beneficiary assignments to signatory operators.

Bellaire's argument was based on the Sixth Circuit's earlier decision in *Dixie Fuel*. The Sixth Circuit there held that SSA had no continuing power to make initial assignments of Combined Fund beneficiaries to signatory operators on or after October 1, 1993. The court reasoned that the word "shall" in Section 9706(a) unambiguously expressed Congress' intent that SSA complete all initial assignments before October 1, 1993, and that the Coal Act's entire scheme for assigning beneficiaries and financing the Combined Fund confirmed this interpretation. 171 F.3d at 1062-63.

On April 5, 2000, Bellaire moved for preliminary and permanent injunctive relief, partial summary judgment, and for the entry of final judgment on its *Dixie Fuel* claim.[17/] Based entirely on *Dixie Fuel*, the district court entered judgment in favor of Bellaire. 01-705 Pet. App. 12a-13a. It directed the Trustees to provide Bellaire with a credit in the amount of the total premiums previously paid for the 270 beneficiaries at issue. *Id.* The court of appeals affirmed in reliance on *Dixie Fuel*. *Id.* at 3a-4a (*Dixie Fuel* "controls until and unless 'an inconsistent decision of the United States Supreme Court requires modification of the decision or [the Sixth Circuit] sitting en banc overrules the prior decision.'").

Dixie Fuel, the court's sole basis for ruling in favor of Bellaire, is dubious precedent. The ruling in *Dixie Fuel* had

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17/ The April 5, 2000 motion was filed only against SSA, because the district court had not yet granted the Trustees' motion to intervene as party-defendants, a motion that Bellaire opposed. After the district court granted the Trustees' motion to intervene, Bellaire filed a motion against the Trustees that was in all other material respects identical to the one filed against SSA on April 5, 2000.

no practical effect on the parties in that case, and indeed, it appears clear that the court of appeals lacked jurisdiction to render its decision. The case came to the court of appeals under 28 U.S.C. § 1292 (a)(1), on plaintiff's appeal from the district court's denial of its motion for a preliminary injunction. By the time the court of appeals heard the case, however, the preliminary injunction motion had become moot. This Court had decided *Eastern* in June 1998, and, on the basis of that decision, SSA notified Dixie Fuel that all of its beneficiary assignments were void (for reasons having nothing to do with the date on which the assignments were made). Accordingly, Dixie Fuel's preliminary injunction motion—and the appeal from the denial of that motion—were moot, because neither the government nor the Combined Fund was seeking to collect any premiums from Dixie Fuel or otherwise to impose any Coal Act obligations against the company. As a consequence, Dixie Fuel was not threatened with any harm, irreparable or otherwise, during the pendency of the litigation. Under these circumstances, the court of appeals' appellate jurisdiction under Section 1292(a)(1) was nonexistent. *University of Texas v. Camenisch*, 451 U.S. 390 (1981).

Moreover, before the court of appeals decided the case, Dixie Fuel moved for, and the district court granted, *final judgment* for Dixie Fuel as a matter of law, as a result of *Eastern* and the consequent voiding of Dixie Fuel's beneficiary assignments. *Dixie Fuel Co. v. Callahan*, No. 97-373 (E.D. Ky. Jan. 7, 1999). SSA, the only defendant in the case, did not appeal. Thus, the entire case had been concluded for some time, when in late March 1999, the court of appeals decided the appeal from the denial of a preliminary injunction. By that time, not only had the preliminary injunction motion become moot, but the entire case was over, and there was no case or controversy left for the Sixth Circuit to decide. Though the court's decision has generated extensive litigation, with a huge potential impact

on the Combined Fund and the Coal Act's allocation of liability, it had no effect whatever on Dixie Fuel itself, whose assignments already had been voided and which therefore had no Coal Act liability.

SUMMARY OF THE ARGUMENT

As the Fourth Circuit correctly concluded in *Pardee*, 269 F.3d at 438, "[t]o excuse the financial obligations of coal operators, where liability is both identifiable and identified, would frustrate the text, purpose, and legislative history of the [Coal] Act." Yet that is precisely the result Bellaire seeks here, in attempting to jettison responsibility for the 270 Combined Fund beneficiaries at issue. Bellaire does not dispute that it is the signatory operator to which these beneficiaries should have been assigned under the Coal Act's criteria. Nonetheless, because the beneficiaries were assigned to Bellaire after September 30, 1993, and because they had not previously been assigned to any other operator, Bellaire seeks a windfall of several million dollars. Because SSA did not act quickly enough, Bellaire maintains that it should be permanently relieved of responsibility for the beneficiaries in question and that the cost of financing their health care should be shifted either to the AML Fund or to the entire group of assigned operators, all of whom have either no employment connection to these beneficiaries or a lesser connection than Bellaire. Bellaire's position cannot be reconciled with prior authority from this Court.

This Court has ruled that even when a statutory date is paired with mandatory language such as the word "shall," a government agency will not "in the ordinary course" be divested of power to act after a statutory date. *United States v. James Daniel Good Real Property*, 510 U.S. 43, 63 (1993); *United States v. Montalvo-Murillo*, 495 U.S. 711, 717 (1990); *Brock v. Pierce County*, 476 U.S. 253, 260-66 (1986). The presumption in favor of agency retention of the authority to act, repeatedly applied by the Court, is based on

the public policy that the public interest should not be prejudiced by the failings of government officials. *United States v. Nashville, C. & St. L. Ry. Co.*, 118 U.S. 120, 125 (1886). *Dixie Fuel* virtually ignored this line of precedent, and acted instead as if the question of SSA's authority to make initial assignments of Combined Fund beneficiaries after September 30, 1993 was resolved by the statutory declaration that assignments "shall" be made before October 1, 1993. To the contrary, however, the statutory date only raises, but does not answer, that question.

Congress' use of the mandatory word "shall" in the Coal Act does not depart from "the ordinary course," nor does any other provision of the Coal Act indicate that the statutory date is jurisdictional rather than directory. The important issue is not whether the word "shall" is used, but whether Congress has specified in the statute what should happen if the government fails to comply with the prescribed date. Nowhere in the Coal Act did Congress state or suggest that, if SSA could not complete beneficiary assignments by October 1, 1993, Congress wanted SSA to terminate the initial assignment process and deposit the remaining retirees and dependents into the category of unassigned beneficiaries. The plain purpose of the October 1, 1993 date was to spur SSA to make the assignments promptly so that the Combined Fund could assess health care premiums at the beginning of its second plan year and thus secure a steady flow of monthly premium payments after the conclusion of the statutory interim funding arrangements for the first plan year. That in no way implies that Congress wanted to relieve employers of financial responsibility for former employees that SSA was unable to assign until after October 1, 1993.

There is no sensible reason why Congress would intend such a result. The ruling below and in *Dixie Fuel* undercuts Congress' carefully crafted liability structure. Treating thousands of eligible retirees and dependents as

unassigned solely because the assignments were not completed by October 1, 1993, would shift liability from former employers and related persons, such as Bellaire, who have the most proximate connection to the Combined Fund beneficiaries, to less responsible assigned operators, most (if not all) of which had no employment connection at all with the beneficiaries. Congress could not have intended its framework to be so disrupted simply because SSA was unable to complete the assignment process before October 1, 1993.

Nor can such disruption be justified by any alleged need to permanently fix assignments by October 1, 1993 for the liability scheme to work properly. It is undisputed (and acknowledged in *Dixie Fuel*) that, under the Coal Act, beneficiary assignments made before October 1, 1993 and later determined to be incorrect could be rescinded and the beneficiaries involved reassigned to other employers. *See Dixie Fuel*, 171 F.3d at 1061, 1064; 26 U.S.C. § 9706(f)(3)(ii). Accordingly, the entire issue here could have been avoided if SSA, on September 30, 1993, simply had assigned at random all not-yet-assigned beneficiaries to some particular coal company. These assignments then could have been reviewed at a later date and the appropriate corrections could have been made. But, because SSA (having no reason to believe that the statute would be interpreted as it has been by the Sixth Circuit) did not employ such a strategy, the court of appeals would forever bar SSA from assigning the beneficiaries at issue to the proper operators.

This peculiar result perhaps would be more tolerable if there were any indication that Congress intended the October 1, 1993 date to confer rights on the signatory operators. Nothing in the Coal Act, however, suggests that Congress was concerned with protecting any interest in repose or certainty on the part of the signatory operators, and

thus adopted some sort of across-the-board amnesty for health care premiums for beneficiaries not assigned before October 1, 1993. There is not a hint in the proceedings below or in *Dixie Fuel* that any assigned operator is even remotely prejudiced by the date of the assignments at issue. Here, for example, there is no dispute that the beneficiaries *should have been* assigned to Bellaire under the criteria in Section 9706(a). If SSA had made the assignments before October 1, 1993, Bellaire would have been asked to pay the exact same amount that it is being asked to pay today. The *only* reason why Bellaire has been absolved of liability is that SSA made its determination "too late." Nothing in the text of the Coal Act suggests that this is the result Congress intended.

Under this Court's well-established canon of statutory construction, the absence of any clearly expressed consequence of SSA's non-compliance compels the conclusion that Congress did not intend for SSA to forfeit its authority to make initial assignments after September 30, 1993. Even if it were necessary to continue beyond an analysis of the statutory text, however, other indicia of congressional intent foreclose any suggestion that Congress intended Section 9706's date to be jurisdictional. The Coal Act's legislative history, purpose, and historical context demonstrate that the unassigned beneficiary designation was intended to be reserved for beneficiaries who were *unassignable* under the statutory criteria, *i.e.*, orphan retirees and their dependents. Congress intended to keep the number of unassigned beneficiaries to an absolute minimum, not to increase that number by thousands because of administrative delay.

Furthermore, voiding all initial assignments made on or after October 1, 1993 would undermine Congress' express purpose of stabilizing funding of a *private* health care benefit plan. If the Sixth Circuit's approach were upheld, an

increased amount would be needed from the AML Fund to help defray the health care expenses of the increased number of unassigned beneficiaries. These funds then would not be available for other public uses, such as to reclaim abandoned mine lands, which was the original purpose for the AML Fund.

If any ambiguity remains, the Court should defer to SSA's reasonable interpretation of the statute, which expressly committed to the agency the Combined Fund beneficiary assignment process. SSA reasonably interpreted "unassigned beneficiaries" to include only those beneficiaries for whom no signatory operator or related person could be identified. Having received no instruction from Congress that any unfinished assignment work should be discontinued on October 1, 1993, SSA proceeded to make original assignments after that date. This had the effect of placing financial responsibility for the affected beneficiaries' health care exactly where Congress intended to place it. Because SSA's interpretation is consistent with the Coal Act, it should be upheld, and original assignments made on or after October 1, 1993 should not be invalidated on the basis of their timing.

ARGUMENT

I. THE DECISIONS BELOW CONFLICT WITH THIS COURT'S PRECEDENTS REGARDING THE EFFECT OF A GOVERNMENT AGENCY'S NON-COMPLIANCE WITH A STATUTORY DATE.

The Sixth Circuit stripped SSA of the authority to make initial beneficiary assignments under Section 9706(a) solely because the agency was unable to complete the task "before October 1, 1993." The court considered itself bound by *Dixie Fuel*, and simply adhered to the earlier decision, without further analysis. *Dixie Fuel*, however, applied the wrong analytical framework for determining the legal effect

of a government agency's failure to meet a statutory date, and this led to an erroneous interpretation of the Coal Act.

Congress directed in Section 9706(a) of the Coal Act that SSA "shall, before October 1, 1993" initially assign each eligible beneficiary to a signatory operator or related person that remains in business. 26 U.S.C. § 9706(a). According to *Dixie Fuel*, this language, "plain on its face," is "explicitly mandatory." 171 F.3d at 1061. If by this characterization the Sixth Circuit meant that Congress wanted initial Combined Fund beneficiary assignments to be made before October 1, 1993, no one would quarrel. But the Sixth Circuit meant far more. It assumed that its use of the label "mandatory" resolved the question of whether SSA retained authority to make initial assignments of Combined Fund beneficiaries after September 30, 1993.[18/] That was error.

The Coal Act's direction to act by a statutory date merely raises, but does not answer, the question presented here.[19/] It does not determine whether SSA loses jurisdiction to act if it has not completed its work on schedule. As this Court held in *Brock v. Pierce County*, 476 U.S. 253, 262 (1986), "the mere use of the word 'shall' . . . standing alone, is not enough to remove [the agency's] power to act after" the statutory date. Although *Dixie Fuel* gave *Brock* a formalistic nod, *see* 171 F.3d at 1062, the court analyzed the issue as if SSA were required to overcome a general

18/ *See Kelso v. United States Dep't of State*, 13 F. Supp. 2d 12, 14-15 (D.D.C. 1998) ("The word 'mandatory,' though it sounds redoubtable and impressive, is no more than a term of art with a precise legal meaning; one that bears no resemblance to that advocated by the Plaintiff.").

19/ *Kelso*, 13 F. Supp. 2d at 14-15 (finding a word "mandatory" is only part of the inquiry needed to determine whether and to what extent to sanction agencies that fail to comply with a statutory deadline).

presumption against its power to act after September 30, 1993.

Such a presumption is the opposite of that applied by this Court, which repeatedly has held that the use of mandatory language such as "shall" does not, in the ordinary course, divest a government agency of the power to act after a statutory date. *United States v. James Daniel Good Real Property*, 510 U.S. 43, 63 (1993) (unanimously holding that if a statute "does not specify a consequence of noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction"); *see Regions Hosp. v. Shalala*, 522 U.S. 448, 460 n.3 (1998) ("The Secretary's failure to meet the deadline, a not uncommon occurrence when heavy loads are thrust on administrators, does not mean that official lacked power to act beyond it."); *United States v. Montalvo-Murillo*, 495 U.S. 711, 718 (1990) ("Although the duty is mandatory, the sanction for breach is not loss of all later powers to act."); *General Motors Corp. v. United States*, 496 U.S. 530, 542 (1990) ("In the absence of a specific provision suggesting that Congress intended to create an enforcement bar [as the consequence of a missed statutory date], we decline to infer one."); *Brock*, 476 U.S. at 260 ("We would be most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent action, especially when important public rights are at stake.").

Congress will not be deemed to have departed from the "ordinary course" unless it clearly says so by specifying a consequence in the statute for non-compliance with the timing provision, *James Daniel Good*, 510 U.S. at 63, or by using negative words that prohibit the agency from acting in any other manner or at any other time than that specified.[20/]

20/ *E.g., In re Siggers*, 132 F.3d 333, 336 (6th Cir. 1997) (quoting *French v. Edwards*, 80 U.S. (13 Wall.) 506, 511 (1871)); 3 NORMAN J.

Here, of course, the statute contains no such negative words. The Coal Act does not say that SSA may not make beneficiary assignments on or after October 1, 1993, and it does not say that any assignments made on or after that date are automatically invalid.

Thus, contrary to *Dixie Fuel*'s approach, the general presumption in this context is *against* forfeiture of an agency's power to act. This Court's rulings on the point go back more than a century,[21/] and the principle has been applied in a multitude of contexts by many federal courts of appeals.[22/] Congress presumably was aware of this well-

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SINGER, SUTHERLAND ON STATUTES AND STATUTORY CONSTRUCTION § 57:19 (6th ed. 2001) [hereinafter *Statutory Construction*] (the "absence of negative words may be considered in support of directory construction").

21/ *United States v. Nashville, C. & St. L. Ry. Co.*, 118 U.S. 120, 125 (1886) ("It is settled beyond doubt or controversy, upon the foundation of the great principle of public policy . . . which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided . . . unless congress clearly manifested its intention that they should be so bound [by a statute of limitations]."); *French*, 80 U.S. at 511; *Brown v. Duchesne*, 60 U.S. 183, 195 (1856) ("Neither will the court, in expounding a statute, give to it a construction which would in any degree disarm the Government of a power which has been confided to it to be used for the general good . . . unless plain and express words indicated that such was the intention of the Legislature.").

22/ *United States v. General Motors Corp.*, 876 F.2d 1060 (1st Cir. 1989) (Clean Air Act); *United States v. Boccanfuso*, 882 F.2d 666, 671 (2d Cir. 1989) (Clean Air Act); *Southwestern Pa. Growth Alliance v. Browner*, 121 F.3d 106, 114 (3d Cir. 1997) (Clean Air Act); *Pardee*, 269 F.3d at 431 (Coal Act); *Fort Worth Nat'l Corp. v. FSLIC*, 469 F.2d 47, 58 (5th Cir. 1972) (National Housing Act); *In re Siggers*, 132 F.3d 333, 336 (6th Cir. 1997) (habeas corpus); *Hendrickson v. FDIC*, 113 F.3d 98, 101 (7th Cir. 1997) (Federal Deposit Insurance Act); *Kinion v. United States*, 8 F.3d 639, 644 (8th Cir. 1993) (Agricultural Credit Act); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1400 (9th Cir. 1995) (Endangered Species Act); *Twin Pines Coal Co. v. United States Dep't of Labor*, 854 F.2d 1212, 1216 (10th Cir. 1988) (Federal Mine Safety and Health Act);

established canon of statutory construction and the applicable case law when it enacted the Coal Act.[23/]

Virtually ignoring the foregoing line of authority and relying instead on *United States v. Monsanto*, 491 U.S. 600, 607 (1989), and like cases, *Dixie Fuel* attributed undue weight to its determination that the word "shall" is mandatory. 171 F.3d at 1061-62. *Monsanto* and other cases cited by *Dixie Fuel* had nothing to do with the effect of a government agency's failure to meet a statutory date.[24/]

Marshall Durbin Food Corp. v. I.C.C., 959 F.2d 915, 919 (11th Cir. 1992) (Interstate Commerce Act); *Brotherhood of Ry. Carmen Div., Transp. Communications Intern. Union v. Pena*, 64 F.3d 702, 704 (D.C. Cir. 1995) (Federal Railroad Administration regulations); *Gottlieb v. Pena*, 41 F.3d 730, 734 (D.C. Cir. 1994) (Coast Guard Authorization Act); *Oy v. United States*, 61 F.3d 866, 871 (Fed. Cir. 1995) (Antidumping Act regulations).

23/ *Gottlieb*, 41 F.3d at 736 ("Congress is deemed to act with knowledge" of *James Daniel Good, Brock, etc.*); *Pardee*, 269 F.2d at 433 (same); *see McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 496 (1991) ("presumable that Congress legislates with knowledge of our basic rules of statutory construction," including a "well-established presumption"); *Young v. United States*, 122 S. Ct. 1036, 1040 (2002) (Congress must be presumed to draft limitations periods in light of "hornbook law" that limitations periods are subject to equitable tolling).

24/ The cases cited in *Dixie Fuel* were decided in the following very different contexts: *United States v. Monsanto*, 491 U.S. 600 (1989) (criminal defendant who is convicted "shall" forfeit property related to the crime); *Societe Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522, 534 & n.15 (1987) (Hague Evidence Convention's omission of mandatory language such as "shall" indicates that treaty was not intended to provide exclusive and mandatory procedure for obtaining documents within foreign territory); *Hewitt v. Helms*, 459 U.S. 460, 471-72 (1983) (use of mandatory terms like "shall" in regulations for confining prison inmates to administrative segregation created liberty interest protected by Due Process Clause); *Anderson v. Yungkau*, 329 U.S. 482, 485-86 (1947) (a civil case "shall" be dismissed against decedent under Fed. R. Civ. P. 25(a) if substitution not made within two years).

Cases like *James Daniel Good* and *Brock*, by contrast, specifically arose in the latter context. They acknowledge the interpretive principles and public policy concerns that govern when and under what circumstances time constraints can be imposed on a government agency's power to complete its delegated tasks.[25/]

In *Brock*, for example, the Court considered whether the Secretary of Labor lost the power to recover misused funds from participants in a training program because he failed to make timely final determinations under the program's authorizing statute. 476 U.S. at 253. The statute provided that the Secretary "shall issue a final determination as to the misuse of" such funds within 120 days. *Id.* Notwithstanding the statute's use of the term "shall," the Court held that the Secretary of Labor did *not* lose his power to recover misused funds even if the requisite final determination did not come until after the statutory date. *Id.* at 264. The Court reasoned that the Secretary's responsibility to issue final determinations was a "substantial task," and that his ability to complete it within 120 days was "subject to factors beyond his control." *Id.* at 259. Rejecting the argument that the Secretary lacked authority to act, the Court found it difficult "to believe that Congress intended such drastic consequences to follow from the Secretary's failure to meet the 120-day deadline," particularly since the

25/ *See James Daniel Good*, 510 U.S. at 64 ("There is no presumption or general rule that for every duty imposed upon the government there must exist some corollary punitive sanctions for departures or omissions, even if negligent."); *id.* at 63 ("many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them do not limit their power or render its exercise in disregard of the requisitions ineffectual") (citations and internal quotations omitted); *Brock*, 476 U.S. at 260 (public policy forbids that the negligence of government officers be permitted to prejudice the public interest).

taxpaying public would be prejudiced by the Secretary's inability to recover the misused funds. *Id.* at 259-62.

Here, proper implementation of the Coal Act's beneficiary assignment system affects thousands of retirees as well as hundreds of operators and former operators within the coal industry, and SSA's task of researching retirees' work histories and assigning them to the most responsible entities was enormous. Further, SSA's ability to complete its task in a timely manner was dependent on circumstances over which the agency had no control. SSA could not begin the assignment process until Congress provided funding on July 13, 1993, and, once funded, SSA had to rely on the cooperation of other entities to gather the information needed to assign retirees in accordance with the statutory criteria.[26/] In addition, as in *Brock*, conserving public funds—in particular, the AML Fund monies earmarked for mine reclamation activities—is in the public interest. Absent a very clear expression of congressional intent to produce such a result, SSA's tardiness should not mean that public funds, rather than Bellaire's funds, are used to pay for the health care of Bellaire's retirees.

26/ *E.g.*, 26 U.S.C. § 9706 (d) (directing federal agencies to "cooperate" with SSA in its effort to gather the information needed to make assignments).

II. NOTHING IN THE COAL ACT REFLECTS A CONGRESSIONAL INTENT THAT SSA LOSE JURISDICTION TO MAKE INITIAL ASSIGNMENTS ON OCTOBER 1, 1993 AND THAT BENEFICIARIES NOT YET ASSIGNED ON THAT DATE BE DESIGNATED AS FOREVER UNASSIGNED.

The Coal Act makes clear that Congress wanted all initial assignments of Combined Fund beneficiaries to be made before October 1, 1993. 26 U.S.C. § 9706(a). The statute also makes clear, however, that Congress wanted Combined Fund beneficiaries to be assigned according to the criteria set forth in Section 9706(a), and that Congress wanted as many beneficiaries as possible to be assigned to specific employers or related persons, so that the number of unassigned beneficiaries could be kept to an absolute minimum.[27/] Because in some cases SSA did not meet the statutory date, Congress necessarily has been deprived of full adherence to its intended schedule. But, like other federal statutes, the Coal Act does not suggest that this departure also should require a departure from Congress's intended substantive scheme. *See, e.g., Regions Hospital,* 522 U.S. at 459-60 (Congress would intend government agency to "exercise . . . authority to effectuate the Legislature's overriding purpose" rather than perpetuate error due to agency's failure to act swiftly enough); *St. Regis Mohawk Tribe v. Brock,* 769 F.2d 37, 41 (2d Cir. 1985), *cert. denied,*

27/ *E.g.*, U.S.C. § 9701 (historical note) ("it is necessary to . . . identify persons most responsible for plan liabilities"); 138 Cong. Rec. 34,002 (1992) ("[T]he Conference Agreement's overriding purpose is to find and designate a specific obligor for as many beneficiaries in the Plans as possible."); *id.* at 34,003 ("The Conference Report's purpose is to assure that any beneficiary, once assigned, remains the responsibility of a particular operator, and that the number of unassigned beneficiaries is kept to an absolute minimum.").

476 U.S. 1140 (1986) (statutory deadline not jurisdictional because Clean Air Act sets up a "hierarchy of priorities" in which goal of improving air quality takes precedence over other goals).

As noted above, the Coal Act neither prohibits initial assignments from being made on or after October 1, 1993, nor does it say that any Combined Fund beneficiary not assigned by October 1, 1993 shall be permanently classified as "unassigned." *Pardee*, 269 F.3d at 433. Read as a whole, the Coal Act uses the term "unassigned" to refer only to beneficiaries who are *unassignable* because SSA was unable to identify an existing employer that satisfies Section 9706's criteria; there is no indication that the "unassigned" designation should be applied merely because SSA had not yet completed the initial assignment process. *See Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989) ("the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"); *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984) ("the meaning of a word must be ascertained in the context of achieving particular objectives"); *cf. Sigmon*, 122 S. Ct. at 948 (beneficiary is "unassigned" if "no existing company falls within [Section 9706(a)'s] categories").

Notwithstanding the foregoing, the Sixth Circuit in *Dixie Fuel* ruled that the Coal Act specified a consequence for SSA's delay, because any beneficiary not assigned before October 1, 1993 could be treated as an unassigned beneficiary. 171 F.3d at 1063 ("The consequence flowing from the failure of the Commissioner to make those assignments before October 1, 1993, is clear from the plain language of the statute: the eligible beneficiaries who were not assigned are the unassigned beneficiaries."). But this approach simply assumes away the issue in this case. Respondent in *Brock* could just as well have declared that, on the 121st day, the Secretary of Labor's determination had to

be final or there could be no enforcement action. *See also Oy v. United States,* 61 F.3d at 872 (in rejecting claim that revocation of anti-dumping finding is necessary consequence of agency's failure to meet statutory deadline, Federal Circuit states that "this argument assumes the very argument urged by" the importer).

Altogether missing from *Dixie Fuel* is any consideration of whether the language of the Coal Act indicates that *Congress intended* beneficiaries to be designated "unassigned" as a "consequence" of SSA's lateness (*i.e.*, whether there is any apparent linkage between unassigned status and non-compliance with the statutory date).[28/] The Coal Act, when read as a whole, shows that the statutory provisions for financing the health care of unassigned beneficiaries are intended to provide a safety net for financing orphans' benefits, not to sanction SSA for not completing the assignment process fast enough or to provide a windfall for responsible operators who did not receive their assignments "in time."[29/] It is clear from the structure of the Coal Act's remedial scheme and the nature of the practical problem faced by Congress that the statutory date of October 1, 1993 was connected to the legislative need to have a new system in place by the time of the termination of the 1988 NBCWA on February 1, 1993 and the impossibility of completing the beneficiary assignment process contemplated by Congress between the October 24, 1992 enactment date

28/ *See Statutory Construction* § 57:8 ("[t]he problem . . . is one of determining whether the legislature intended to impose sanctions to secure compliance, and if so, what sanctions were intended").

29/ *See King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) (it is a "cardinal rule that a statute is to be read as a whole"); *Shell Oil Co. v. Iowa Dep't of Revenue*, 488 U.S. 19, 26 (1988) (in expounding a statute, Court is not guided by a single sentence or member of a sentence, but by the provisions of the whole law, and its object and policy).

and the date in February 1993 when the Combined Fund would need to begin providing benefits. The schedule adopted by Congress was designed to protect retiree health benefits and forestall labor unrest at the end of the term of the 1988 NBCWA.[30/]

It is not surprising, then, that Congress did not say, either explicitly or implicitly, that beneficiaries not yet assigned on October 1, 1993 must be left permanently unassigned. Section 9706 does not use the term "unassigned beneficiary" at all. Section 9704(d) provides for an "unassigned beneficiaries premium," but it does not purport to define "unassigned beneficiary":

> The unassigned beneficiaries premium for any plan year for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person *for such plan year*.

26 U.S.C. § 9704(d) (emphasis added). Section 9704(f) defines the term "applicable percentage":

> (1) In general. The term "applicable percentage" means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

30/ *See Edwards,* 482 U.S. at 595 (historical context and sequence of events leading to passage of the statute relevant to statutory construction).

26 U.S.C. § 9704(f)(1). The statute then provides for annual adjustments in that percentage to take account of changes in assignments as a result of administrative appeals or assigned operators and their related persons ceasing to do business. 26 U.S.C. § 9704(f)(2). Read together, these provisions allocate the unassigned beneficiaries premiums among signatory operators on the basis of their pro rata share of the beneficiaries that have been assigned. None of the provisions, however, defines "unassigned beneficiary," and none suggests that beneficiaries not assigned before October 1, 1993 must be left permanently unassigned. In fact, Section 9704(d)'s reference to beneficiaries who "are not assigned under section 9706 to any person *for such plan year*" and Section 9704(f)(1)'s calculation based on assignments "as of October 1, 1993," suggest that, even if some assignments are made after October 1, 1993, the necessary calculation can be performed "as of" that date. At a minimum, the statutory provisions are ambiguous and do not foreclose SSA's interpretation.[31/]

The definitional provisions in Section 9701 do not change the situation. The terms "assigned beneficiary" and "unassigned beneficiary" are not defined, and the term "assigned operator" merely refers back to Section 9706. The statutory definitions of "assigned operator," "signatory operator," "related persons," and "business" reflect the broad coverage of the statute, and are thus consistent with the announced congressional intent "to provide the greatest

31/ *See Edelman v. Lynchburg College*, 122 S. Ct. 1145, 1154 (2002) (O'Connor, J., concurring) (where Title VII's definition section does not define "charge," and the statutory requirement that a "charge" be verified is not framed as a definition, Congress cannot be said to have unambiguously expressed its intent that a charge be verified when filed; *Chevron*-deference is due to the agency's interpretation); *Brown v. Gardner*, 513 U.S. 115, 118 (1994) ("Ambiguity is a creature not of definitional possibilities but of statutory context.").

number of beneficiaries with health care benefits paid for by a company which remains in business and was the retiree's signatory employer, or is or was a person related to such signatory."[32/]

Contrary to this intent, under *Dixie Fuel*'s interpretation, all signatory operators who otherwise would be liable under the Coal Act, but did not receive assignments before October 1, 1993, would not be classified as "assigned operators" at all. They would escape *all* responsibility, including responsibility for their own former employees as well as their proportionate share of any unassigned beneficiaries premium. Signatory operators who received at least some assignments before October 1, 1993 would become liable also for those beneficiaries for whom others were more responsible under the statutory framework. Operators who received all or nearly all of their assignments before October 1, 1993 (perhaps because they conceded liability or because their corporate structures and employment relationships were more straightforward and thus more readily susceptible to SSA's investigation) would bear the brunt of the impact. This would pervert the plan adopted by Congress and would skew Coal Act liability based on the ease and rapidity with which assignments were made—factors very different from the employment relationships with signatory operators that Congress sought to stress.

For additional reasons as well, *Dixie Fuel*'s conclusion that the Coal Act's "entire statutory scheme for assigning beneficiaries and financing the Combined Fund reflects Congress's intent that all assignments be completed by October 1, 1993" cannot withstand scrutiny. 171 F.3d at

32/ 138 Cong. Rec. 34,002 (1992); *see also id.* at 34,001 (definitions intended to be given "broad interpretation" to advance goal of assigning retirees to companies that benefited from their services).

1062. *Dixie Fuel*'s reliance on the word "shall" is undermined by the numerous appearances of the same word in other timing provisions throughout the Coal Act.[33/] Usual principles of statutory construction would require "shall" to have the same meaning in each such provision.[34/] It simply is implausible, however, that Congress would have intended *Dixie Fuel*'s interpretation to apply, with the result that all action under the Coal Act would come to a halt if any of the prescribed dates were missed. It cannot be, for example, that if Combined Fund trustees were not designated within 60 days of the statute's enactment, then they could not be designated at all, or if the required transfers from the 1950 Pension Plan to the Combined Fund were not made on the specified dates, then they could not be made at all.

Nor can the outcome in *Dixie Fuel* be justified by the court of appeals' assertion that "the calculation of the obligation of every assigned operator for payment of unassigned beneficiary premiums is dependent upon the completion of the assignment of beneficiaries by October 1, 1993." 171 F.3d at 1063. This assertion hinged on the erroneous assumption that, because the Coal Act contains a

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33/ *E.g.*, 26 U.S.C. § 9702(a)(1) (no later than 60 days after enactment, trustees "shall" be designated); 26 U.S.C. § 9702(a)(2) (1950 and 1974 UMWA Benefit Plans "shall" be merged as of February 1, 1993); 26 U.S.C. § 9704(h) (no later than 60 days after enactment date, Combined Fund "shall" furnish information to SSA); 26 U.S.C. § 9705(a) (transfers from 1950 UMWA Pension Plan "shall" be made by specified dates); 26 U.S.C. § 9706(c) (by the later of October 24, 1992 or twentieth day after the enactment date, the UMWA Benefit Plans "shall" provide SSA with information); 26 U.S.C. § 9706(d)(2) (information "shall be promptly transmitted" from other agencies to SSA).

34/ *Comm'r of Internal Revenue v. Lundy*, 516 U.S. 235, 250 (1996) ("the normal rule of statutory construction [is] that identical words used in different parts of the same act are intended to have the same meaning"); *Brown*, 513 U.S. at 118 ("a word is known by the company it keeps") (internal quotation and citation omitted).

detailed timetable for various events, the statutory date by which SSA was to make Combined Fund beneficiary assignments is necessarily jurisdictional. This Court, however, already has rejected the argument that the existence of such a timetable divests an agency of authority to act after statutorily specified dates.

In *General Motors Corp. v. United States,* 496 U.S. 530 (1990), for example, an environmental protection statute contained a statutory deadline and an integrated timetable that reflected the urgency of establishing air-pollution controls. *Id.* at 533, 536. The agency did not comply with all of the timing provisions. Although the statute included an integrated timetable, and compliance with the timetable would have promoted the underlying objective of reducing air pollution, this Court stated that "[i]n the absence of a specific provision suggesting that Congress intended to create an enforcement bar, we decline to infer one." *Id.* at 542.

Here, not only is there no such specific provision in the Coal Act, but there is also no good policy reason for divesting SSA of the power to make assignments after the statutory date.[35/] Nothing about the Coal Act's system for calculating health care premiums makes it essential that the number of unassigned beneficiaries be determined once and for all by September 30, 1993. The number of unassigned beneficiaries has been changed on numerous occasions throughout the history of the Combined Fund, and the statute expressly contemplates that possibility. Section 9706(f) of the Coal Act provides an administrative procedure through which any assigned operator can challenge SSA's assignment

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35/ *See Gottlieb*, 41 F.3d at 736 (even where Congress had comparably strong reasons for placing time limitations on agencies, if Congress failed to specify the consequence of a violation, Court refused to create one of its own).

of beneficiaries. 26 U.S.C. § 9706(f); 20 C.F.R. §§ 422.601-607. If, as a result of such a challenge, SSA determines that one or more assignments were in error, those assignments are rescinded, and SSA considers whether the beneficiaries can be assigned to another operator. 20 C.F.R. § 422.606(f). If SSA cannot identify any operator that fulfills the assignment criteria of Section 9706(a) with respect to a particular beneficiary, that beneficiary is treated as unassigned. *See* 26 U.S.C. § 9704(f)(2)(A); 20 C.F.R. § 422.606(f). Similarly, if and when an assigned operator is no longer "in business" within the meaning of the Coal Act and there are no related persons in existence, the beneficiaries assigned to that operator become unassigned for future years. 26 U.S.C. § 9704(f)(2)(B). In addition, SSA may reopen and revise an assignment on its own initiative within one year of its notice of assignment to the assigned operator. 20 C.F.R. § 422.607. These scenarios have occurred with some frequency since September 30, 1993, and as a consequence, the number of unassigned beneficiaries has been adjusted annually.

The same sort of adjustment occurred after this Court's decision in *Eastern*, in which the Court declared the Coal Act unconstitutional as applied to the petitioner in that case. After *Eastern*, SSA reviewed the circumstances of all assigned operators and, for those that SSA concluded were similarly situated to Eastern, SSA declared the operators' beneficiary assignments void. Some of these beneficiaries could be reassigned, but many could not. Thus, *Eastern*, which was not decided until the Combined Fund's sixth plan year, significantly increased the number of unassigned beneficiaries, and it did so as of February 1, 1993, the date on which the Combined Fund began providing benefits.

To deal with these many changes in beneficiary assignments and the number of unassigned beneficiaries, the Combined Fund uses an accounting method called "inception billing," which annually adjusts for the retroactive effect of

changes in beneficiary assignments. *Pardee*, 269 F.3d at 434. Operators relieved of assignments receive credits or refunds going back to the first plan year, and beneficiaries that become unassigned as a result of successful challenges to the assignments or court decisions increase the unassigned beneficiary premium account under Section 9704(d) of the Coal Act for all prior years. All operators prior premium assessments are recalculated accordingly, and a consolidated bill (including the adjusted version of all prior bills and payments) is issued at the beginning of each new plan year. *Dixie Fuel* is simply wrong, therefore, in asserting that the Coal Act's premium assessment and calculation system will not work if the number of unassigned beneficiaries is not determined once and for all by September 30, 1993. To the contrary, as the Fourth Circuit recognized in *Pardee*, the Coal Act explicitly contemplates annual readjustments of operator liability based on changes in assignments, and these adjustments cannot be reconciled with the static system envisioned by *Dixie Fuel*. 269 F.3d at 434.

In addition, as the Fourth Circuit also recognized, adoption of *Dixie Fuel*'s approach "would create irrational distinctions in the SSA's power to reevaluate its initial assignments." *Pardee*, 269 F.3d at 435. For example, if SSA erroneously concluded before October 1, 1993 that a beneficiary was unassignable, but later received information connecting the beneficiary to an extant employer, SSA would be barred from making the appropriate assignment. That would not be so, however, if SSA initially assigned a beneficiary to the wrong coal operator. *Dixie Fuel* would permit reassignment of beneficiaries who were initially assigned to the wrong operator, but it would forbid "reassignment" of beneficiaries who were initially assigned to no operator. Congress could not have "intended the allocation of liability to rest on such a hollow distinction." *Pardee*, 269 F.3d at 435.

The Sixth Circuit's statutory construction in *Dixie Fuel,* if it could have been anticipated by SSA, would have presented the agency with a "perverse incentive to make a timely 'rough cut.'" *Pardee*, 269 F.3d at 435 n.15. SSA would have avoided the entire issue here if, realizing by September 30, 1993 that it could not complete the assignment process by that day, it had simply assigned *all* not-yet-assigned beneficiaries to coal company X or Y or Z. These assignments then could have been reviewed at a later date and the appropriate corrections could have been made. But, because SSA had no reason to believe that it would be stripped of authority to make beneficiary assignments after September 30, 1993, it sought to comply with Congress' intent that it make determinations based on "reasonable inferences" and "accurate data," 138 Cong. Rec. 34,004 (1992). Given Congress' chief concern of assigning as many beneficiaries as possible to the most responsible parties, Congress could not have intended that SSA be forever barred from assigning the beneficiaries at issue to the proper operators simply because SSA was behind schedule or because SSA did not uncover on its own relevant information regarding corporate or employment relationships that only came to light in later administrative appeals involving beneficiaries already assigned.

Nothing in the Coal Act suggests that Congress intended the October 1, 1993 date in Section 9706(a) to protect whatever interest signatory operators (or related persons) might have in prompt assignment of beneficiaries. Neither the Sixth Circuit nor Bellaire has identified any evidence that Congress was concerned with repose or mathematical certainty for the signatory operators. To the contrary, the definitions of responsible parties are broad, and may reach back many years in the employment relationship. 26 U.S.C. § 9706(a)(1) - (3); 26 U.S.C. § 9701(5) and (7). *Pardee*, 269 F.3d at 434 (the Coal Act subordinates coal operators' interests, if any, to overriding interest in ensuring

fair and accurate assignments). Further, as noted above, the Coal Act expressly authorizes SSA to make assignments to operators well after the October 1, 1993 date, as part of the appeals process through which original beneficiary assignments may be rescinded and the affected beneficiaries assigned to new operators. 26 U.S.C. § 9706(f). Consequently, a signatory operator can receive its very first beneficiary assignment well after October 1, 1993, even under the *Dixie Fuel* rationale. Thus, there is no basis, let alone a sufficient basis, to infer that Congress intended the statutory date to be inflexible, so as to create a "safe-harbor" for responsible signatory operators like Bellaire.

In sum, although Congress indicated its intent that beneficiary assignments be made promptly, it did not specify a consequence for SSA's non-compliance with the statutory date, and there is no indication in any provision of the Coal Act of an intent or reason for cutting off SSA's power to make assignments on or after October 1, 1993. The lack of a specified consequence in the statutory text should be dispositive of SSA's authority to make assignments on or after the statutory date. *See James Daniel Good*, 510 U.S. at 63. Because "the text and reasonable inferences from it give a clear answer" in favor of SSA, that should be "the end of the matter." *Brown*, 513 U.S. at 120.

III. OTHER INDICIA OF CONGRESSIONAL INTENT CONFIRM THAT SSA RETAINED AUTHORITY TO MAKE ORIGINAL ASSIGNMENTS AFTER THE STATUTORY DATE.

Although the text of the Coal Act, properly read in light of this Court's precedents, is sufficient to demonstrate the error in *Dixie Fuel*, the Coal Act's legislative history, historical context, purpose, and public policy implications all point to the same conclusion. The Senate's proposed Conference Report for the Coal Act and other legislative

materials show that Congress intended "unassigned beneficiaries" to mean only Combined Fund orphans. Provision after provision of the report reflects the Coal Act's fundamental principle that employers should pay for the health care of their own former employees and that "unassigned" beneficiaries are those not assignable under the statutory criteria:

> The method of assignment of eligible beneficiaries was the source of much debate and controversy prior to the Conference Agreement. The conferees intend that the largest possible number of beneficiaries in the Plans be assigned to a specific or designated company. Under the statute, each eligible beneficiary shall be assigned in the following order . . . . Finally, if no operator remains in business under the formulations described above, that retiree becomes an unassigned beneficiary.

138 Cong. Rec. 34,003 (1992).

> As a practical matter, not all beneficiaries can be assigned to a specific last signatory operator, related person or assigned operator for payment purposes. This is because in some instances, none of those persons remain in business, even as defined to include non-mining related businesses. Thus, provisions are made for unassigned beneficiary premiums. In each plan year each assigned operator will pay a premium earmarked to cover the health costs of these unassigned beneficiaries.

Id.

> The essence of the Conference Agreement is that those companies which employed the retirees in question, and thereby benefited from their services, will be assigned responsibility for providing health care benefits promised in their various collective

> bargaining agreements. This will be accomplished through a formulation designed to allocate the greatest number of beneficiaries in the Plans to a prior responsible operator.

Id. at 34,001.

> [T]he Conference Agreement's overriding purpose is to find and designate a specific obligor for as many beneficiaries in the Plans as possible.

Id. at 34,002.

> The Conference Report's purpose is to assure that any beneficiary, once assigned, remains the responsibility of a particular operator, and that the number of unassigned beneficiaries is kept to an absolute minimum.

Id. at 34,003.

The remarks of Senator Rockefeller, the primary sponsor of the legislation, confirm this understanding:

> The key difference [in this bill] relates to the funding of health benefits for the orphan retirees. In general, these are the people whose companies are out of business.
>
> ***
>
> The approach of this legislation rests on the important principle that responsible companies should bear the cost of these health benefits. It is a rational approach. It is a fair approach.

138 Cong. Rec. 20,118 (1992). Senator Ford, a co-sponsor, agreed:

> We have closed the new orphan fund so to limit the problem and ensure a long-term solution. We have attempted to allocate costs according to the principle

> that those most responsible should bear the greatest proportion of the costs.

Id. at 20,120. Senator Wallop placed in the record the *CRS Report*, which analyzed the use of transfers from the AML Funds to finance benefits for "orphan retirees." *Id.* at 34,001 (remarks of Sen. Wallop), 34,004-11 (*CRS Report*).

The Coal Act's financing structure was carefully considered, extensively debated, and determined by Congress to be the best allocation of responsibility and best balance of competing interests and limited resources. As noted by Senator Rockefeller, "[t]he approach of the current legislation was not lightly arrived at. Lengthy and difficult negotiations were required because of the myriad of conflicting interests in our nationwide coal industry." 138 Cong. Rec. 20,118 (1992). It would be odd indeed if Congress, having created such a careful balancing of interests, would have chosen at the same time to cut off SSA's authority on October 1, 1993, which, as events transpired, was less than 80 days after SSA received funding from Congress to commence the beneficiary assignment process.[36/]

In contrast, the legislative history relating to the October 1, 1993 date is unremarkable.[37/] It does not indicate

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36/ Supplemental Appropriations Act of 1993, H.R. 2118, Pub. L. No. 103-50, Ch. V, 139 Cong. Rec. D. 765; *see Brock,* 476 U.S. at 265 ("It would be very odd if Congress had implemented [its intent to discover and rectify abuses under federal training program] by cutting off the Secretary's authority to correct abuses just 120 days after learning of them.").

37/ *See, e.g.*, 138 Cong. Rec. 34,003 ("The amount of the unassigned beneficiary premium payable by each assigned operator will be calculated on the number of beneficiaries assignable to each operator as of October 1, 1993."); *id.* ("In the first plan year the Secretary of HHS will review the work history of each beneficiary and will prepare the assigned operator allocations which are required to be made by October

that the date is jurisdictional. Nor does it indicate any reason why Congress would choose to make it so. "Conspicuously absent" from the Coal Act's text and legislative history "is any reference to the possibility that the [October 1, 1993] provision might convey rights on" the signatory operators. *See Brock,* 476 U.S. at 264. To the contrary, the Coal Act's history evidences an antipathy toward coal operators' past "dumping" of retired coal miners and a clear intent to make as many beneficiary assignments as possible and to hold the most responsible persons liable. Senator Rockefeller's remarks sum up this point:

> We must stop the past practice in which existing companies dump their responsibilities onto the companies that have faithfully kept their commitments.

138 Cong. Rec. 20,118 (1992).

Furthermore, voiding all assignments made on or after October 1, 1993 would undermine Congress' express purpose of stabilizing funding of a *private* health care benefit plan. *See* 26 U.S.C. § 9701 (historical note). Leaving thousands of beneficiaries unassigned despite the ability to match them with employers under Section 9706(a)'s criteria will create a windfall for certain coal operators at the expense of other operators, as well as the general public. *Pardee*, 269 F.3d at 437; *see Montalvo-Murillo*, 495 U.S. at 720 (when it is inevitable that delays will occur despite diligent efforts "there is no reason to bestow upon the defendant a windfall and to visit upon the Government and the citizens a severe penalty"). Although premiums for the assigned beneficiaries

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1, 1993."). The Fourth Circuit ruled that the phrase "*assignable*...as of October 1, 1993" provided significant evidence that assignments could be made after that date. *Pardee*, 269 F.3d at 436; *see also id.* ("the paucity of references to this 'dead-line' is conspicuous and compelling").

are paid entirely by coal operators, the costs of providing health care for unassigned beneficiaries are not. Beginning with the Combined Fund's fiscal year 1996 (October 1, 1995 to September 30, 1996), the Secretary of the Interior makes annual transfers of interest that has accrued on the AML Fund to the Combined Fund to defray the cost of health care for unassigned beneficiaries. 30 U.S.C. § 1232(h). The funds thus transferred may be used only to pay for unassigned beneficiary expenses. *See* 26 U.S.C. § 9705(b); 30 U.S.C. § 1232(h); 138 Cong. Rec. 34,004 (1992). If those funds prove insufficient, the Coal Act provides for the assessment of additional premiums agair.st assigned operators based on their proportionate share of the assigned beneficiaries. 26 U.S.C. § 9704(d) & (f); *Pardee*, 269 F.3d at 438. To date, the transfers from the AML Fund, which as of November 30, 2000, have amounted to more than $336 million, have been sufficient to cover the unassigned beneficiary premiums. *Pardee*, 269 F.3d at 438. "Given the high cost of health care for retired miners, and the likely diminution of the fund's interest earning capacity," however, "the interest may not last for long." *Sigmon*, 122 S. Ct. at 961 n.5 (Stevens, J., dissenting).

The federal government's portion of the AML Fund interest not transferred to the Combined Fund remains available to pay for the environmental clean-up of abandoned mines (or for whatever other projects Congress may allocate the funds). 30 U.S.C. § 1231(b)(5) and (c); *see also* 30 U.S.C. § 1232(g)(4)(A). The funding for mine reclamation projects follows a strict order of priority that first targets projects to protect the public "from extreme danger" at abandoned mine sites. *See* 30 U.S.C. § 1233(a)(1); 30 U.S.C. § 1233(a)(2) - (5) (ranking additional priorities); *see also Pardee*, 269 F.3d at 438 n.19 ("magnitude of nation's reclamation needs is alarming"). If the number of unassigned beneficiaries is artificially inflated and greater costs are absorbed by the AML Fund, rather than by the responsible

coal companies to which Congress intended the beneficiaries to be assigned, the result will redound to the public's detriment by reducing the sums available in the AML Fund for other public purposes. *See CRS Report* at 138 Cong. Rec. 34,004-11 (1992). Although Congress authorized AML Fund transfers, it was based on the understanding that the Fund would be used "solely and exclusively" for unassigned beneficiaries, *id.* at 34,004, and that unassigned beneficiaries would be kept to "an absolute minimum," *id.* at 34,003. It is highly unlikely that Congress would intend the AML Fund interest to be depleted unnecessarily due simply to SSA's delay. There is no evidence that the Congress that enacted the Coal Act had any such intent. *See Pardee*, 269 F.3d at 438.

IV. DEFERENCE IS DUE TO SSA'S INTERPRETATION OF "UNASSIGNED BENEFICIARIES" TO INCLUDE ONLY COMBINED FUND ORPHANS.

At a minimum, the relevant Coal Act provisions are ambiguous, and deference is due to SSA's reasonable interpretation of Section 9706(a) and the term "unassigned beneficiary." Congress delegated to SSA the duty to carry out the assignment process, 26 U.S.C. § 9706(a), to notify assigned operators of their obligations, 26 U.S.C. § 9706(e)(2), to review assignment determinations for error, 26 U.S.C. § 9706(f), and to calculate the per beneficiary premium for each plan year, 26 U.S.C. § 9704(b)(2). These directions imply a delegation to SSA of the authority to determine the proper assignment of beneficiaries to signatory operators as well as definitions of general applicability, such as "unassigned beneficiary."[38/]

38/ *See* 138 Cong. Rec. 34,003 (1992) ("[I]t is intended under the statute that the Secretary have authority to promulgate regulations governing the method by which determinations of the assigned operator

To carry out its duties, SSA promulgated regulations in compliance with the Administrative Procedure Act. *See* 58 Fed. Reg. 52914 (1993). Although SSA's regulations do not define "unassigned beneficiary," they do state explicitly that beneficiaries will be treated as unassigned "[i]f no assigned operator can be identified." 20 C.F.R. § 442.606(f). In addition, SSA has clearly and consistently expressed its opinion on the issue. After a considered review, SSA concluded that *Dixie Fuel* was wrongly decided and that the agency would continue to litigate the issue in the Sixth Circuit and other jurisdictions.

In these circumstances, SSA's interpretation of the Coal Act is entitled to deference under *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).[39/] The only remaining question is whether SSA's interpretation is reasonable. *Id.* at 843.

SSA's interpretation and implementation are plainly reasonable and consistent with the aims of the Coal Act, as the foregoing analysis of the text, legislative history, and historical context shows. Interpreting "unassigned

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will be made and setting out the review procedures available to an assigned operator once such determinations are made."); *Association of Bituminous Contractors, Inc. v. Apfel*, 156 F.3d 1246, 1251 (D.C. Cir. 1998) (granting *Chevron*-deference to SSA's interpretation of "coal industry," which term is not defined by Coal Act).

39/ *See United States v. Mead Corp.*, 121 S. Ct. 2164, 2175 (2001) (*Chevron*-deference due when Congress delegated authority to agency and agency interpretation was promulgated under that authority); *Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 647-52 (1990) (*Chevron*-deference to PBGC's interpretation of ERISA's requirements for restoring a terminated plan, which interpretation was reflected in agency's notice of restoration); *NationsBank of N.C. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251 (1995) (*Chevron*-deference to Comptroller of Currency's letter to bank granting request to act as agent in sale of annuities).

beneficiaries" to include only Combined Fund orphans, and finding no evidence in the statute that Congress intended SSA to halt its assignment work on October 1, 1993, SSA reasonably proceeded to make original assignments after that date. That SSA's interpretation is fully reasonable is verified by the Fourth Circuit's identical conclusion:

> Congress intended the status of individual beneficiaries to depend not on the vicissitudes of bureaucratic action, but instead on the merits, *i.e.*, whether an extant operator could be identified and held responsible.

Pardee, 269 F.3d at 438. Accordingly, original assignments made on or after October 1, 1993 are valid, and Bellaire should be held responsible for the 270 beneficiaries at issue here.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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